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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73405

PAUL E. MC ARTHUR,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PAUL E. MC ARTHUR, Pro Se
P. O. Box 1911
Hollywood, California 90028

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TOPICAL INDEX

	Page
Table of Authorities	iii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
CONSTITUTIONAL PROVISIONS	4
STATEMENT OF THE CASE	5
STAGE IN PROCEEDINGS AND MANNER OF RAISING FEDERAL QUESTIONS	7
SUMMARY OF AND REFERENCES TO FEDERAL QUESTIONS RAISED	7
REASONS FOR ALLOWING THE WRIT	9
1. Abnormal Trial Court Procedure Must Be Controlled	9
2. Erosion of Fundamental Constitutional Rights Must Be Stopped	10

3. Elimination of Essential Elements of a Fair Trial Cannot be Tolerated 10

4. Cases "Not Serious" To Courts Are Extremely Serious to Defendants 11

CONCLUSION 12

JUDGMENT Appexdix A

ORDER DENYING REHEARING Appendix B

TABLE OF AUTHORITIES

Cases

	Page
Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582	9
Spears v. Johnson, (1971 D.C. Pa.) 327 F.Supp. 1021	10

Constitutions

Constitution of the State of California, Article 1, Section 13	5, 8
United States Constitution, Sixth Amendment	4, 8
United States Constitution, Fourteenth Amendment	4, 8, 9

Rules

Supreme Court Rules Rule 19 (1b and 2)	2, 9

Statutes

Title 28 United States Code § 1257(3)	2

Miscellaneous

The Supreme Court Review - 1969	10

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Mc Arthur, respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Department of the Superior Court of the State of California for the County of Los Angeles entered against him in the above entitled case on June 6, 1973.

OPINIONS BELOW (none)

No oral or written opinions were issued by the courts below.

JURISDICTION

The judgment of the Appellate Department of the Superior Court of the State of California for the County of Los Angeles, affirming the trial court's conviction of petitioner on June 8, 1972, was entered on June 6, 1973. A timely petition for rehearing and/or certification to the Court of Appeal of the State of California was denied on June 6, 1973.

Jurisdiction of this Court is invoked under Rule 19 (1b and 2) of the Supreme Court Rules and Title 28, United States Code, Section 1257 (3), petitioner having asserted in the court below rights guaranteed by the Constitution of the United States.

QUESTIONS PRESENTED

1. Where a criminal trial, without a jury, was terminated by the trial court judge without giving the accused petitioner the opportunity to complete testimony in his own defense, or to present a witness in his behalf, or to rest his case, or to argue his case, were the rights of petitioner to a fair and complete trial, to defend himself, to equal protection of the laws, and to the due process of law, as guaranteed by the Constitutions of the United States and of the State of California, so grossly and flagrantly violated by such procedure as to call for an exercise of supervision by this Court?

2. In a criminal trial, where both the prosecutor and the trial court judge totally and flagrantly ignored the duties and responsibilities imposed upon them by Constitutions of the United States and of the State of California concerning determination of the validity of petitioner's waivers before accepting his waiver of right to counsel and waiver of right to a jury trial, were the rights of petitioner to a fair trial, to equal protection of the laws, and to the due process of law, as guaranteed by the Constitutions of the United States and of the State of California, so flagrantly violated as to call for an exercise of supervision by this Court?

3. Were the rights of petitioner to a fair trial, to equal protection of the laws, and to the due process of law, as guaranteed by the Constitutions of the United States and of the State of California, violated when, as a defendant, in propria persona, accused of a crime considered by the courts as "NOT SERIOUS", he was, in effect, accorded so much less right to a fair trial, to equal protection of the laws, and to the due process of law than is accorded a defendant accused of a "SERIOUS" crime, that basic fundamental rights guaranteed ALL defendants were ignored?

CONSTITUTIONAL PROVISIONS

Sixth Amendment, United States Constitution provides, in pertinent parts:

> "In all criminal prosecutions, the accused shall enjoy the right to a * * * trial, by an impartial jury * * * * to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense."

Fourteenth Amendment, Section 1, United States Constitution provides in pertinent parts:

> " * * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 1, Section 13, Constitution of the State of California provides, in pertinent parts:

> "In criminal prosecutions, in any court whatever, the party accused shall have the right * * * to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall * * * be deprived of life, liberty, or property without due process of law; * * * "

STATEMENT OF THE CASE

Although petitioner believes he was innocent, only the procedure and conduct of the trial, not the guilt or innocence of the defendant petitioner, is involved in the questions presented by this petition.

The petitioner, Paul Mc Arthur, was accused, tried and convicted of taking a pair of pants from a department store without paying for them, a violation of California Penal Code sections involving petty theft, a misdemeanor. Petitioner testified he did not "take"; he exchanged pants previously purchased after getting an OK to do so from a salesclerk who was busy with another customer.

At the trial, the petitioner, acting in propria persona, waived his right to counsel, and waived his right to a jury trial; and both the prosecutor and trial court judge accepted both waivers without inquiry or determination in any manner as to the validity of the waivers.

The prosecutor was then permitted to present his complete case up to the point of "The prosecution rests". The defendant petitioner was permitted to relate the narrative of the incident up to a point, but then, before defendant petitioner had completed his testimony, or had presented a witness in his behalf, or had rested his case, or had argued his case, the trial court judge terminated the proceedings, and pronounced the verdict and sentence.

Then without regard to actual occurrences at the trial, the official docket of the case was prepared stating falsely that "Defendant Rested", and "Both Sides Rested".

Eight months later, on motion by defendant petitioner to the trial court, the false entries in the docket were crossed out.

STAGE IN PROCEEDINGS AND MANNER OF RAISING FEDERAL QUESTIONS

Petitioner did not assert Constitutional rights in the trial court.

Petitioner did assert, in writing, denial of Constitutional rights throughout the State appellate procedure, i.e.; in his Statement On Appeal, his Opening Brief, his Reply Brief, and his Petition for Rehearing and/or Certification to the Court of Appeal. No assertion of rights was made orally in the appellate process for no oral agrument was made by either side throughout the State appellate procedure.

SUMMARY OF AND REFERENCES TO FEDERAL QUESTIONS RAISED

1. Petitioner asserted in the State appellate procedure that because of the abnormal procedure of the trial court in abruptly terminating the trial without giving petitioner the opportunity to complete testimony in his

own defense, or to present a witness in his behalf, or to rest his case, or to argue his case, petitioner did not receive either a fair, or an impartial, or a complete trial, and therefore was denied the due process of law in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13 of the Constitution of the State of California. (Statement On Appeal, page 3, last paragraph; Opening Brief, Argument, points IV A, C, D and F, pages 10, 11, 12 and 13.)

2. Petitioner asserted in the State appellate procedure that because both the prosecutor and trial court judge accepted petitioner's waiver of right to counsel and waviver of right to a jury trial without inquiry or determination of any kind that such waivers were knowingly and intelligently made, they flagrantly ignored their duty, and denied petitioner's right to the due process of law in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13 of the Constitution of the State of California. (Opening Brief, Argument, points I C, page 5, and II C, page 7.)

3. The argument that the crime petitioner was accused of was "not serious", and therefore, in effect, not deserving of the same degree of observance of Constitutional rights, was first stated against petitioner in Respondent's Brief (page 2), then reraised by

petitioner in his Reply Brief (page 5) and in his Petition for Rehearing and/or Certification to the Court of Appeal (page 4).

REASONS FOR ALLOWING THE WRIT

1. Abnormal Trial Court Procedure Must Be Controlled.

Petitioner believes that Rule 19 (1b and 2) of the Supreme Court Rules is specifically applicable to this case wherein the trial court, by terminating the trial before normal and accepted trial defense procedure was completed, as previously described, so far departed from the accepted and usual course of judicial proceedings, and the appellate court so far silently sanctioned such a departure by the lower court as to call for an exercise of this court's power of supervision. Lower trial and appellate courts would thereby be shown that Constitutional guaranties must not be ignored; and as in Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582, judicial proceedings, being due process of law in the sense of the Fourteenth Amendment, must be according to accepted and established modes of procedure.

2. Erosion of Fundamental Constitutional Rights Must Be Stopped.

Although petitioner's case is small in the busy Los Angeles judicial system, petitioner believes it is not unique. Many other defendants, especially those acting in propria persona, could have had, and could have in the future, similar treatment, whereby their fundamental rights are totally ignored; and if appealed, some legally expedient logic for overriding flagrant violations of fundamental Constitutional rights is found. On page 156 of "The Supreme Court Review - 1969" is a statement that a policeman, lawyer, judge cannot be trusted to respect the Constitution. Considering that statement and the procedure in petitioner's trial, petitioner believes that unless erosion of fundamental rights is stopped, and trial and appellate judges are required to enforce Constitutional rights, that the right of an accused to a fair and complete trial, to defend himself in court, and to the due process of law, will exist for future defendants only in text books and rhetoric but not in reality.

3. Elimination of Essential Elements of a Fair Trial Cannot Be Tolerated.

It was stated in U.S. ex rel. Spears v. Johnson (1971 D.C. Pa.), 327 F.Supp. 1021 that in a criminal nonjury case foreclosing the right of defendant to summation is a

violation of such a fundamental right that due process is offended without regard to the showing of prejudice. Petitioner was convicted by a trial in which, not only were fundamental rights ignored and violated, but several complete elements of trial procedure, essential to a fair and complete trial, were eliminated. Crowded court calendars probably encourage such practice. Petitioner believes that if a trial procedure such as occurred at petitioner's trial is permitted to stand, that it will encourage further steps toward eliminating or bypassing fundamental rights and essential elements till Constitutional guaranties, as a reality, will be a farce.

4. Cases "Not Serious" To Courts Are Extremely Serious to Defendants.

Even though trial court judges may dispose of cases, considered by them to be in the "not serious" category, quickly by giving only token observance to, or by completely ignoring, fundamental Constitutional rights of the defendant; what may be "not serious" to the court can be extremely serious to the defendant, affecting him for the remainder of his life. Petitioner, therefore, believes that where trial courts and appellate jurisdictions permit, what appears to petitioner to be expedient judicial procedure to take precedence over fundamental Constitutional rights, supervision and guidance by this Court is necessary.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that certiorari be granted.

Respectfully submitted,

PAUL E. MC ARTHUR
Pro Se

APPENDIX A - JUDGMENT

APPELLATE DEPARTMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Respondent,

vs

PAUL E. Mc ARTHUR,
Defendant and Appellant.

Superior Court No. CR A 11530

Trial Court No. 47787625

ON APPEAL FROM THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.
Philip M. Newman, Judge

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ordered and adjudged that the judgment made and entered in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same is hereby affirmed.

Filed May 21, 1973

Judgment entered June 6, 1973

BY THE COURT

Whyte Presiding Katz Laur

APPENDIX B - ORDER DENYING REHEARING

APPELLATE DEPARTMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs

PAUL E. Mc ARTHUR,
Defendant and Appellant.

Superior Court No. CR A 11530
Municipal Court of the Los Angeles
Judicial District No. 47787625

ORDER DENYING REHEARING AND
DENYING CERTIFICATION

The petition of appellant for a rehearing after judgment of this court on appeal, or, in the alternative, petition for certification of cause to the Court of Appeal in the above-entitled case, having been filed and having been duly considered, Said petition is hereby denied.

Dated and filed June 6, 1973

BY THE COURT

Whyte
Presiding Judge

Katz
Judge

Laur
Judge